

PUBLIC INTEREST DISCLOSURE ACT: GUIDE FOR DIRECTORS OF GOVERNMENT BODIES

PUBLIC INTEREST DISCLOSURE ACT

The *Public Interest Disclosure Act* (PIDA) is whistleblower protection legislation for current and former public sector employees in British Columbia¹. It provides a clear process for reporting wrongdoing relating to a public body and mechanisms to investigate and address wrongdoing when found.

PIDA also prohibits reprisal against employees who report wrongdoing, who request advice under PIDA or who cooperate with a PIDA investigation.

PIDA first covered ministries and offices of the legislature in 2019 and is being rolled out to further public sector organizations, referred to as “government bodies”, over a four-year period ending in December 2024.

DIRECTORS UNDER PIDA

Under section 2(a)(i) of PIDA, directors and officers of government bodies are defined as employees. Government bodies are listed in the *PIDA Regulation* and are distinct from government ministries and offices of the legislature.

The inclusion of directors in PIDA’s definition of “employee” means that current or former directors on boards of governance for government bodies covered by PIDA are able to request advice and make disclosures under PIDA.

Like all employees, directors who want to request advice or make a disclosure under PIDA have a choice. They can opt to do so to the Office of the Ombudsperson or to their organization’s Designated Officer. By requesting advice or making a disclosure through the Ombudsperson or the Designated Officer, directors are covered by PIDA’s confidentiality and reprisal protections.

¹ See the Ombudsperson website for the list of organizations covered under PIDA - <https://bcombudsperson.ca/public-interest-disclosure/what-is-covered-by-pida/>

RESPONSIBILITIES OF CHIEF EXECUTIVES AND DESIGNATED OFFICERS UNDER PIDA

Under PIDA, the Chief Executive of a public body must appoint at least one senior official to be a Designated Officer. Designated Officers are responsible for responding to requests for advice, receiving disclosures and investigating disclosures of wrongdoing under PIDA. If no senior official is appointed, by default the Chief Executive performs the role of the Designated Officer.

CONFIDENTIALITY

There are provisions protecting the identity of employees who seek advice about making a disclosure or make a disclosure under PIDA. It is an offence for supervisors or Designated Officers to breach PIDA’s confidentiality provisions.

Everyone in receipt of a report of wrongdoing or request for advice under PIDA must keep the identity of the person involved confidential. They must take steps to ensure that they do not inadvertently enable the identification of the employee as someone who reported wrongdoing or sought advice.

If a director receives information about an ongoing PIDA investigation, or information that identifies an employee as someone who has sought advice or made a disclosure, they *must* not share that information with anyone else. The director should also take steps to remind the source of that information about the confidentiality provisions of PIDA

INFORMATION DIRECTORS CAN EXPECT TO RECEIVE

Regular hierarchical lines of reporting within an organization do not apply under PIDA and directors are not entitled to receive information regarding requests for advice or disclosures made by employees of their organization. Further, PIDA prevents Designated Officers from sharing information about disclosures or the conduct of investigations except when following PIDA's reporting procedures.

At the conclusion of a PIDA investigation, the Designated Officer must produce an investigation report for the Chief Executive. This will include a finding of whether wrongdoing occurred and any recommendations to address issues of concern identified during the investigation. A Designated Officer's recommendations are not limited to a finding of wrongdoing but can address other concerning issues whether they are individual matters or those of policy, practice or systems within the organization.

A summary of the final investigation report may be shared with the directors of the organization. This summary should ensure no information is included which could lead to the identification of an employee as a discloser. Your organization may also want to determine the level of participation directors will have with any recommendations which flow from PIDA investigations.

If a Chief Executive is implicated in the wrongdoing, or if they have a real or perceived conflict of interest related to the disclosure, we recommend the organization consult with the Ombudsperson as soon as possible regarding the disclosure.

ADDRESSING CONCERNS WHICH ARE NOT APPROPRIATE FOR PIDA

Understandably, government bodies may want to address concerning matters raised during requests for advice or in disclosures if those matters are determined by a Designated Officer to not warrant further action under PIDA. Directors may be

involved in decisions regarding how to address those matters of concern outside of PIDA, whether through existing employment law mechanisms, their organization's standards of conduct investigations, or another avenue. However, PIDA's confidentiality provisions continue to apply. All measures must be taken to ensure that information which could identify the employee as someone who sought advice or made a disclosure is not shared during any follow-up process undertaken by the organization.

ENCOURAGE EMPLOYEES TO SPEAK UP

It is in the best interest of government bodies to encourage their employees to speak up about matters of wrongdoing; matters which may adversely impact public confidence in the organization, its finances, or the health and safety of its workplace. Directors can contribute to cultivating a culture where employees feel that it is safe to speak up by emphasizing how seriously the organization takes disclosures of wrongdoing; and setting the tone that reprisal will not be tolerated in the organization. In order to preserve the integrity of public sector organizations, it is essential that employees speak up about their concerns.

CONTACTING THE OMBUDSPERSON

Employees and officials who have questions about PIDA, the role of our office, or who need more information about how to make a disclosure, can speak to a member of our public interest disclosure team directly by calling our office at 1-800-567-3247, or contacting us via email at report@bcombudsperson.ca.